IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.186 OF 2004

Kishore Sadhuram Nagdeo ... Petitioner

versus

The State of Maharashtra & anr. ... Respondents

...

Mr.Pankaj J. Das, for the Applicant.

Mr.V.B.Konde Deshmukh, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

25th February 2005

P.C.:

. Heard Counsel for the parties. Rule. Rule made returnable forthwith by consent. Mr. Konde Deshmukh, A.P.P., waives notice for the Respondents. As short question is involved, petition is taken up for final disposal forthwith by consent.

. This petition takes exception to the order passed by the Principal Secretary (Appeal and Security), dated 29th November 2003 rejecting the Petitioner's appeal against the order of externment which was passed by the Deputy Commissioner of Police, Zone-IV, Ulhasnagar, District Thane dated 4th November 2003 ordering externment of the Petitioner from the limits of Thane District, Greater Mumbai, Mumbai Suburban and Raigad District for a period of two years from the date of his removal from the said limits pursuant to the said order.

. Two contentions have been raised before this Court. The first argument is that the order of externment from the limits of Thane District, Greater Mumbai, Mumbai Suburban and Raigad District is excessive, in that, the material on record would indicate that the activity of the Petitioner was confined to Ulhasnagar. The second contention is that there was no material on record to form an opinion that the Petitioner was committing robberies, causing serious hurts and threatening the residents at the point of deadly weapons or threatening of dire

consequences, as has been recorded by the competent authority in the order dated 4th November 2003, which opinion has been affirmed erroneously by the appellate authority vide order dated 29th November 2003.

. After considering the rival submissions, in my opinion, the Petitioner ought to succeed on the second contention. Sofar as the first contention is concerned, the show cause notice spells out reasons for externing the petitioner from the limits of areas as referred to above. The order of the competent authority proceeds on that basis and the appellate authority has affirmed the same view. It will be useful to advert to the exposition of the Apex Court in the case of Pandharinath v. State, reported in A.I.R. 1973 S.C. 630.

. However, as mentioned earlier, the Petitioner ought to succeed on the second contention. There is substance in the grievance made that there was absolutely no material on record to justify the subjective satisfaction reached by the authorities below that the

Petitioner was committing robberies, causing serious hurts or threatening the residents at the point of deadly weapons or threatening of dire consequences. Whereas, the allegation was that the Petitioner used to threaten the concerned persons that he will register complaint in respect of unauthorised construction, if his demand was not met. There is nothing to show that in the process the Petitioner used deadly weapons or caused serious or grievous injury to any one or for that matter, threatened with dire consequences. If it is so, the subjective satisfaction reached by the authorities below suffers from the vice of non-application of mind. In other words, the subjective satisfaction has been reached by the competent authority, which cannot be supported by the materials on record. If it is so, this petition ought to succeed. Accordingly, both the orders passed by the competent authority as well as the appellate authority are set aside. Ordered accordingly.

(A.M.KHANWILKAR,J.)